IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1465 OF 2006

Smt.Nirmala Trimbak Salunke
Age....years, r/o.New Gautam Nagar,
Near Hanuman Mandir, Ekta Chawl,
Rahibasi Sangh, Limboni, Govandi,
Mumbai 400 043. .. Petitioner
(Sister-in-law of detenu)

vs.

1. Shri A.N. Roy
Commissioner of Police,
Greater Mumbai.

2. The State of Maharashtra
(Through the Secretary
Home Department (Spl.)
Mantralaya, Mumbai.

3. The Superintendent,
Nashik Road Central Prison,
Nashik. .. Respondents

Mr.U.N. Tripathi for the petitioner.

Mr.D.S.Mhaispurkar, APP for respondents-State.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATE : 28th February, 2007

ORAL JUDGMENT (Per Anoop V. Mohta,J.).

The detenu-Ganesh Kaluram Salunke, by an order of detention 13.03.2006, has been detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order within the meaning of

Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, "the MPDA Act") and therefore the present petition by his sister-in-law.

2. As per the respondents, on 6.9.2005 at about 24.00 hrs. the detenu called the complainant near Hanuman Mandir, Lumbini baug, Govandi, Mumbai to settle their disputes. The complainant though requested to forgive, the detenu and his friends assaulted on the back side of his head with pieces of farcis (tiles). The complainant fell down. The detenu along with others also started beating him with pieces of farcis on his head, legs and by kicks and fist blows. Seeing this incident, members of the public started running helter-skelter and closed the doors of their houses as the locality was crowded being near railway station. A complaint was lodged under Sections 326, 323, 34 of I.P.C. and the same was registered at Deonar police station on 7.9.2005 against the detenu and his associates.

3. During the course of investigation the police recorded the statements, drew panchanama and arrested the detenu and his associates on 5.10.2005. On 6.10.2005 the detenu was remanded into police custody till 10.10.2005. By another order, the remand was extended till 24.10.2005. Though initially bail was

rejected on 11.10.2005, the Sessions Judge on 27.10.2005 released the detenu on bail. The detenu availed the bail facility on 18.11.2005. On 3.1.2006 the police have filed the chargesheet against the detenu and his associates.

4. The police during the investigation and in confidential enquiry gathered the material and information about the criminal activities that the detenu and his associates have weapons and; nobody is coming forward to complain against him in view of the constant threat and fear of retaliation. However, some of the witnesses (A & B) expressed their willingness to give statements depicting the atrocities committed by the detenu. The statements of witnesses (A & B) therefore have been recorded incamera.

5. Some time in November 2005 at about 22.00 hrs. the detenu along with his associates threatened the witnesses and extracted Rs.2,000/-. At the same time the detenu had also threatened the public at large. The members of the public ran helter skelter from the scene out of fear. The detenu again threatened another witnesses. Some time in the first week of December, 2005 at about 20.30 hrs. the detenu and his associates misbehaved with witness (B). The members of the public though gathered at the scene, but as the detenu removed

a koyata and threatened the surrounding people the public ran away in all directions. This witness also did not lodge any complaint due to fear.

6. The police after recording the statements on 3.1.2006 and 6.2.2006 of the above witnesses and having satisfied that the detenu is a dangerous person as defined in Section 2(b-1) of the MPDA Act and that he has unleashed a reign of terror and become a perpetual danger to the society at large, in the localities within the jurisdiction of Deonar police station in Brihan Mumbai and that the people in the localities in the circumstances were therefore experiencing a sense of insecurity and living in fear because of constant criminal activities of the detenu being a free person submitted proposal for the detention of the detenu.

7. Based on the same and after subjective satisfaction, respondent 1-Commissioner of Police has issued the impugned order of detention dated 13.3.2006 after complying all the necessary formalities as required under the law.

8. The impugned order of detention has been approved by the State Government on 18.3.2006. The order of detention was executed on 25.3.2006. The same was reported to the State Government on 4.4.2006. The case

of detenu was referred to Advisory Board under Section 10 of the MPDA Act on 5.4.2006. The meeting was held on 21.4.2006. The Advisory Board accepted and forwarded its opinion to the State Government on 5.5.2006. The Additional Chief Secretary, after considering the entire material for detention order, the grounds of detention, report of the Hon'ble Advisory Board has confirmed the detention order. The said confirmation order was served upon the detenu on 12.5.2006 through the Superintendent, Nasik Road Central Prison, Nasik. The petitioner has filed the present petition on 7.7.2006.

9. The basic incident occurred at about 2.3 hrs., was first day of Ganpati festival. There was a crowd during the said hours as the locality is near the local railway station. The material like panchanama, statement of witnesses, spot panchanama, as recorded in the affidavit of respondent 1, further endorsed that due to the said incident people were disturbed and ran away from the spot. The action of the detenu along with his associates, affected the maintenance of public order. As the same was also calculated to cause harm, danger or feeling of insecurity among general people and/or section thereof, this was a case of disturbance of public order and not an action only against individual as sought to be contended by the petitioner. The degree of disturbance in the facts and circumstances of the

case, according to us also amounts to adversely affecting the maintenance of public order.

10. The dangerous activities of the detenu have been further confirmed and fortified by two other witnesses, examined incamera. The incident referred and recorded by those two witnesses further supports the case that there was material on the record which was taken into consideration by the detaining authority before passing the order of detention. Those two incidents dated 30.1.2006 and 6.2.2006 occurred in the busy locality and the act of detenu threatening the people on the point of weapons and also threatening the witnesses and other gathered people without any previous enmity also amounts to breach of public order. The justification in coming to the conclusion that the public order was disturbed due to the said incidents is therefore correct. The preamble of the detention order, grounds and the affidavits which backed up the same, cannot be overlooked. Therefore, the contention of the learned counsel for the petitioner that the order of detention was bad on this ground has no force.

11. A submission was made that no proper verification is done by the officers of the statements recorded in the matter. We have gone through the statements and the verification of two witnesses who came forward to give

their statements which has been recorded by the Assistant Police Commissioner on 5.2.2006 and 8.2.2006 is correct. We see no substance in this submission also.

12. There is no force in the submission that documents at Sr. nos.69 to 72 are partly illegible. We have gone through the said documents and we find that those documents are legible.

13. Another submission was made that the detenu was not provided with all translation of the English documents in Marathi language and basically in reference to the order passed by the Magistrate dated 24.10.2005 and 7.11.2005. There is no dispute that the detenu was provided with true, fair and correct translation of grounds of detention. The two sentences order of remand in English passed by the Magistrate, in the facts and circumstances, cannot be said to be prejudicial to the detenu. We find that the remand orders being the formal documents which were merely referred and those were not the basic documents on which the subjectively satisfaction was based. Therefore non-supply of translation of the two line order of Magistrate granting remand cannot be said to have caused any prejudice as alleged. The reliance on **Powanammal vs. State of T.N. & anr., 1999 SCC (Cri) 231** by the learned counsel is of

no assistance. The facts and circumstances are totally distinct and distinguishable. This is not the case of non-supply of a copies of the documents relied upon in the grounds of detention. The translated copies were duly supplied except the two line order of remand passed by the Magistrate to which mere reference was made in the order of detention. In **Powanammal (supra)** the question was whether failure to supply of Tamil version of the remand passed in English, a language not known to the detenu had vitiated the further detention. In **Powanammal's case** (supra) when the detention order was served on the detenu, the detenu was in judicial custody. In such a case need to issue and serve the detention order though the detenu was in custody has to be shown. In the facts of that case therefore the Supreme Court held that non supply of order of remand which was relied upon in the grounds of detention would amount to violation of detenu's right under Article 22(5) of the Constitution of India. In the present case admittedly the detenu was remanded to judicial custody till 24.10.2005. On 24.10.2005 he was produced before the learned Magistrate for remand and he was remanded to judicial custody till 7.11.2005. On 27.10.2005 it is the Sessions Court who granted bail to the detenu and the bail facility was availed by the detenu on 18.11.2005 and thereafter was a free person when the detention order was issued on 13.3.2006. The basic

incident which was relied on was of 6.9.2005 and thereafter two incamera statements of other two incidents were of fourth week of November 2005 and first week of December 2005.

14. The order of detention passed by respondent 1, based on the material on record is correct and need no interference.

15. Taking all this into account, we see there is no case made out by the petitioner to interfere with the impugned order of detention. The petition is therefore dismissed.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]